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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
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8 JOHN R. BUCKENMEYER,

9 Plaintiff,

10 v.

11 CAROLYN W. COLVIN, Acting
12 Commissioner of Social Security
13 Administration,
14 Defendant.
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16
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NO. 2:14-cv-00297-SAB

**ORDER DENYING
PLAINTIFF'S MOTON FOR
SUMMARY JUDGMENT;
GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

18 Before the Court are Plaintiff's Motion for Summary Judgment, ECF No.
19 12, and Defendant's Motion for Summary Judgment, ECF No. 15. The motions
20 were heard without oral argument. Plaintiff is represented by Joseph M. Linehan.
21 Defendant is represented by Assistant United States Attorney Pamela De Rusha
22 and Special Assistant United States Attorney Alexis Toma.

23 **I. Jurisdiction**

24 On April 15, 2011, Plaintiff filed a Title II application for disability
25 insurance benefits (DIB) and also filed a Title XVI application for supplemental
26 security income (SSI) on the same day. Plaintiff alleged he is disabled beginning
27 December 22, 2010, due to depression, an avoidant personality disorder, and a
28 mathematical disorder.

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1 His application was denied initially on August 4, 2011, and again denied on
2 reconsideration on October 31, 2011. A timely request for a hearing was made. On
3 January 24, 2013, Plaintiff appeared at a hearing held in Spokane, Washington
4 before Administrative Law Judge (ALJ) Caroline Siderius. R. Thomas Mcknight,
5 Jr., Ph.D, medical expert, and Thomas Polsin, vocational expert, also participated.
6 Plaintiff was represented by attorney Joseph M. Linehan.

7 The ALJ issued a decision on February 15, 2013, finding that Plaintiff was
8 not disabled. Plaintiff timely requested review by the Appeals Council, which
9 denied his request for review on August 7, 2014. The Appeals Council's denial of
10 review makes the ALJ's decision the final decision of the Commissioner. 42
11 U.S.C. §405(h).

12 Plaintiff filed a timely appeal with the U.S. District Court for the Eastern
13 District of Washington on September 10, 2014. The instant matter is before this
14 Court pursuant to 42 U.S.C. § 405(g).

15 **II. Sequential Evaluation Process**

16 The Social Security Act defines disability as the "inability to engage in any
17 substantial gainful activity by reason of any medically determinable physical or
18 mental impairment which can be expected to result in death or which has lasted or
19 can be expected to last for a continuous period of not less than twelve months."
20 42 U.S.C. § 423(d)(1)(A). A claimant shall be determined to be under a disability
21 only if his impairments are of such severity that the claimant is not only unable to
22 do his previous work, but cannot, considering claimant's age, education and work
23 experiences, engage in any other substantial gainful work which exists in the
24 national economy. 42 U.S.C. §423(d)(2)(A).

25 The Commissioner has established a five-step sequential evaluation process
26 for determining whether a person is disabled. 20 C.F.R. § 416.920(a)(4); *Bowen v.*
27 *Yuckert*, 482 U.S. 137, 140-42 (1987).

1 Step 1: Is the claimant engaged in substantial gainful activities? 20 C.F.R. §
2 416.920(b). Substantial gainful activity is work done for pay and requires
3 compensation above the statutory minimum. 20 C.F.R. § 416.972(a); *Keyes v.*
4 *Sullivan*, 894 F.2d 1053, 1057 (9th Cir. 1990). If the claimant is engaged in
5 substantial activity, benefits are denied. 20 C.F.R. § 416.971. If he is not, the ALJ
6 proceeds to step two.

7 Step 2: Does the claimant have a medically-severe impairment or
8 combination of impairments? 20 C.F.R. § 416.920(c). If the claimant does not
9 have a severe impairment or combination of impairments, the disability claim is
10 denied. A severe impairment is one that lasted or must be expected to last for at
11 least 12 months and must be proven through objective medical evidence. 20
12 C.F.R. § 416.909. If the impairment is severe, the evaluation proceeds to the third
13 step.

14 Step 3: Does the claimant's impairment meet or equal one of the listed
15 impairments acknowledged by the Commissioner to be so severe as to preclude
16 substantial gainful activity? 20 C.F.R. § 416.920(d); 20 C.F.R. § 404 Subpt. P.
17 App. 1. If the impairment meets or equals one of the listed impairments, the
18 claimant is conclusively presumed to be disabled. *Id.* If the impairment is not one
19 conclusively presumed to be disabling, the evaluation proceeds to the fourth step.

20 Before considering Step 4, the ALJ must first determine the claimant's
21 residual functional capacity. 20 C.F.R. § 416.920(e). An individual's residual
22 functional capacity is his ability to do physical and mental work activities on a
23 sustained basis despite limitations from his impairments.

24 Step 4: Does the impairment prevent the claimant from performing work he
25 has performed in the past? 20 C.F.R. § 416.920(f). If the claimant is able to
26 perform his previous work, he is not disabled. *Id.* If the claimant cannot perform
27 this work, the evaluation proceeds to the fifth and final step.

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1 Step 5: Is the claimant able to perform other work in the national economy
2 in view of his age, education, and work experience? 20 C.F.R. § 416.920(g).

3 The initial burden of proof rests upon the claimant to establish a prima facie
4 case of entitlement to disability benefits. *Tackett v. Apfel*, 108 F.3d 1094, 1098
5 (9th Cir. 1999). This burden is met once a claimant establishes that a physical or
6 mental impairment prevents him from engaging in his previous occupation. *Id.* At
7 step five, the burden shifts to the Commissioner to show that the claimant can
8 perform other substantial gainful activity. *Id.*

9 **III. Standard of Review**

10 The Commissioner's determination will be set aside only when the ALJ's
11 findings are based on legal error or are not supported by substantial evidence in
12 the record as a whole. *Matney v. Sullivan*, 981 F.2d 1016, 1018 (9th Cir. 1992)
13 (citing 42 U.S.C. § 405(g)). Substantial evidence is "more than a mere scintilla,"
14 *Richardson v. Perales*, 402 U.S. 389, 401 (1971), but "less than a preponderance."
15 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n. 10 (9th Cir. 1975). Substantial
16 evidence is "such relevant evidence as a reasonable mind might accept as adequate
17 to support a conclusion." *Richardson*, 402 U.S. at 401. The Court must uphold the
18 ALJ's denial of benefits if the evidence is susceptible to more than one rational
19 interpretation, one of which supports the decision of the administrative law judge.
20 *Batson v. Barnhart*, 359 F.3d 1190, 1193 (9th Cir. 2004). "If the evidence can
21 support either outcome, the court may not substitute its judgment for that of the
22 ALJ." *Matney*, 981 F.2d at 1019.

23 A decision supported by substantial evidence will be set aside if the proper
24 legal standards were not applied in weighing the evidence and making the
25 decision. *Browner v. Secretary of Health & Human Servs.*, 839 F.2d 432, 433 (9th
26 Cir. 1988). An ALJ is allowed "inconsequential" errors as long as they are
27 immaterial to the ultimate nondisability determination." *Stout v. Comm'r, Soc. Sec.*
28 *Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006).

1 **IV. Statement of Facts**

2 The facts have been presented in the administrative transcript and the ALJ's
3 decision and will only be summarized here.

4 At the time of the hearing, Plaintiff was twenty-seven years old. Plaintiff
5 has previous work experience including working as a telephone sales
6 representative and cook. He graduated from high school in 2004, but has not
7 attended any college. He has not worked since December, 2010.

8 In 2009, Plaintiff was living in Tacoma, Washington with his mother. He
9 then moved to West Virginia and worked until December, 2010, when he moved
10 back to Washington. At the time of the hearing, he was living with his father and
11 brother in Airway Heights, Washington, but he had also lived in Arizona and
12 Pennsylvania since graduating from high school. He reports that he spends all day
13 on the computer, playing games and communicating with other people. He wakes
14 up around 1 p.m. and goes to bed around 3 a.m.

15 He also reports that he does not get out much because he is uncomfortable
16 around others. He socializes as little as possible and has little motivation to
17 accomplish anything.

18 **V. The ALJ's findings**

19 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
20 activity since December 22, 2010, the application date. (Tr. 22.)

21 At step two, the ALJ found Plaintiff has the following severe impairments:
22 a major depressive disorder, moderate; low average range of intellectual
23 functioning; and avoidant/schizotypal personality traits. (Tr. 22.)

24 At step three, the ALJ found that Plaintiff's impairments or combination of
25 impairments do not meet or medically equal Listing 12.04 (Affective disorders) or
26 12.08 (Personality disorders). (Tr. 23.)

27 The ALJ concluded that Plaintiff has the residual functional capacity to
28 perform a full range of work at all exertional levels, but with the following

1 nonexertional limitations: only one-to-three step tasks, no detailed work, no more
2 than ordinary production standards/requirements, and only superficial contact with
3 others (coworkers, the public) (Tr. 24.)

4 At step four, the ALJ found Plaintiff was not capable of performing any past
5 relevant work. (Tr. 28.)

6 At step five, the ALJ found there were jobs that exist in significant numbers
7 in the national economy that Plaintiff can perform. (Tr. 28.) Because Plaintiff's
8 ability to perform work at all exertional levels was compromised by nonexertional
9 limitations, the ALJ relied on the vocational expert's testimony that Plaintiff
10 would be able to perform the requirements of representative occupations such as:
11 auto detailer and kitchen helper, which would include dishwasher. In doing so, the
12 ALJ concluded that Plaintiff was not disabled under section 1614(a)(3)(A) of the
13 Social Security Act

14 **VI. Issues for Review**

15 1. Did the ALJ commit reversible error by finding that Plaintiff was not
16 fully credible?

17 2. Did the ALJ properly evaluate the medical opinion evidence?

18 3. Is the ALJ's decision supported by substantial evidence?

19 **VII. Discussion**

20 **1. ALJ's credibility decision**

21 The ALJ determined that while some of Plaintiff's alleged symptoms were
22 consistent with the medical evidence, other symptoms were not entirely credible.
23 The ALJ gave several reasons for finding a lack of credibility. These included the
24 fact that while he reported a problem with depression since childhood and a
25 history of special education in high school, he also reported a history of gainful
26 work activity as a telecommunications representative. Specifically, she noted that
27 Plaintiff "was able to work with the same impairments and alleged limitations for
28 some time prior to his alleged disability," and that Plaintiff earned \$13,854 in

1 2007 and \$16,995 in 2010. The ALJ also noted that a more recent evaluation
2 completed in March, 2012 indicated that Plaintiff was capable of returning to
3 work. Additionally, throughout 2012, Plaintiff repeatedly reported to his treatment
4 providers that he was doing well with an increase in medication resulting in more
5 energy, less isolation, and mood stability. The ALJ agreed with Dr. Mcknight's
6 observations that there is no evidence of Plaintiff having difficulty getting along
7 with others. Finally, the ALJ found that Plaintiff's treatment records do not
8 support the frequency and severity of symptoms currently being asserted by
9 Plaintiff. Plaintiff argues this was in error.

10 In determining whether a claimant's testimony regarding symptoms is
11 credible, an ALJ must first determine if the Plaintiff has presented objective
12 medical evidence of an underlying impairment that could reasonably cause the
13 symptoms alleged. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007).
14 If there is no evidence of malingering, the ALJ can only reject the claimant's
15 testimony about her symptoms by "offering specific, clear, and convincing reasons
16 for doing so." *Id.* (internal citation omitted).

17 Here, the ALJ properly provided specific, clear, and convincing reasons for
18 rejecting Plaintiff's statements regarding his limitations. It was reasonable to infer
19 that because Plaintiff was able to perform substantial gainful activities while
20 suffering from depression and an avoidant personality disorder, his allegations that
21 he now can no longer work are not credible. *See Gregory v. Bowen*, 844 F.2d 665,
22 667 (9th Cir. 1988) ("[S]ubstantial evidence indicated that the condition of
23 Gregory's back had remained constant for a number of years and that her back
24 problems had not prevented her from working over that time.").

25 Second, the ALJ properly relied on Dr. Mcknight's testimony. Dr. Mcknight
26 reviewed Plaintiff's longitudinal history and noted that Plaintiff's lack of
27 motivation appeared to be a "maturation issue" in which Plaintiff displayed the
28 behavior of a 13 or 14 year old who spends lots of time on the computer. Dr.

1 Mcknight and the ALJ concluded that Plaintiff had just developed a lifestyle that
2 did not require much of him. This conclusion is supported by substantial evidence
3 in the record. Notably, Plaintiff did not challenge the ALJ's reliance on Dr.
4 Mcknight's testimony.

5 Finally, it was reasonable for the ALJ to rely on the fact that treatment
6 records showed symptom improvement, which contradicted Plaintiff's testimony.
7 As such, the ALJ's credibility determination is adequately supported by relevant
8 evidence.

9 **2. Medical Opinions**

10 John F. Arnold, Ph.D, examined Plaintiff three times: March, 2011, July,
11 2011, and March, 2012. In March, 2011, Dr. Arnold identified that Plaintiff had
12 marked to severe social difficulty and anxiety, and marked depression and
13 anhedonia (lack of pleasure), and moderate to marked social isolation. He noted
14 that Plaintiff had significant social difficulties due to feelings of inadequacy and
15 concern that others are negatively judging him. He believed that at that time
16 Plaintiff would have serious difficulties obtaining or maintaining employment.

17 In July, 2011, Dr. Arnold completed another psychological assessment. The
18 purpose of the assessment was to determine if Plaintiff has significant intellectual
19 deficits that might thwart his ability to be gainfully employed. (Tr. 279.) Plaintiff
20 tested in the Low Average Intellectual Range.

21 Dr. Arnold completed a third assessment in March, 2012. Dr. Arnold noted
22 that his current symptoms would interfere with attendance, productivity, and social
23 interactions at work, but also noted that Plaintiff is capable of understanding and
24 carrying out simple instructions and can concentrate for short periods of time. He
25 can complete simple tasks without close supervision and not disrupt others. Dr.
26 Arnold believed that Plaintiff would work best in positions that have minimal
27 interaction with others.

1 Plaintiff argues that the ALJ ignored Dr. Arnold's statement with regard to
2 work interference. However, the ALJ incorporated these concerns in Plaintiff's
3 residual functional capacity assessment. The Court does not read Dr. Arnold's
4 March, 2012 assessment as concluding that Plaintiff is unable to work. Moreover,
5 the ALJ properly considered Dr. Arnold's most recent assessment in determining
6 Plaintiff's Residual Functional Capacity. *See Osenbrock v. Apfel*, 240 F.3d 1157,
7 1165 (9th Cir. 2001) ("A treating physician's most recent medical reports are
8 highly probative.").

9 3. Substantial Evidence

10 The Court has reviewed the administrative record and concludes that
11 substantial evidence supports the ALJ's decision. The record demonstrates that in
12 2012, Plaintiff's depression was improving. Notably, Plaintiff was able to earn
13 almost \$17,000 in the same year that he alleges he became disabled. Moreover, the
14 Residual Functional Capacity determined by the ALJ is supported by the record.

15 VIII. Conclusion

16 The ALJ did not err in concluding that Plaintiff was not disabled under
17 section 1614(a)(3)(A) of the Social Security Act.

18 Accordingly, **IT IS HEREBY ORDERED:**

19 1. Plaintiff's Motion for Summary Judgment, ECF No. 12, is **DENIED**.

20 2. Defendant's Motion for Summary Judgment, ECF No. 15, is

21 **GRANTED.**

22 3. The decision of the Commissioner denying benefits is **affirmed**.

23 4. The District Court Executive is directed to enter judgment in favor of
24 Defendant and against Plaintiff.

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1 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
2 file this Order and provide copies to counsel.

3 **DATED** this 2nd day of July, 2015.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

9 Stanley A. Bastian
10 United States District Judge